

New Zealand.

IMPRISONMENT FOR DEBT LIMITATION.

1908, No. 80.

AN ACT to consolidate certain Enactments of the General Assembly relating to the Limitation of Imprisonment for Debt.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is “The Imprisonment for Debt Limitation Act, 1908.” Short Title.

(2.) This Act is a consolidation of the enactments mentioned in the Schedule hereto. Enactments consolidated.

(3.) All matters and proceedings commenced under any of the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. In this Act, if not inconsistent with the context,—

“Bailiff” means, as respects the Supreme Court, such Sheriff or other person as would be authorised to execute a writ of arrest, and includes any other officer or person appointed by the Governor to act as bailiff of the Court; and, as respects every Court other than the Supreme Court, means the bailiff of such Court, or any person or officer acting as such bailiff:

Interpretation.
1874, No. 14, secs.
18, 19

“Prescribed” means—

As respects the Supreme Court, prescribed by general rules made in pursuance of “The Judicature Act, 1908”;

As respects the District Courts, prescribed by general rules made under “The District Courts Act, 1908”;

As respects Magistrates’ Courts, prescribed by general rules made under “The Magistrates’ Courts Act, 1908”;

And general rules may respectively be made under the aforesaid Acts for the purpose of carrying this Act into effect:

“Registrar” includes, as respects the Supreme Court, a Deputy Registrar; and, as respects every other Court than the Supreme Court, means and includes the Chief Clerk of such Court, or any person or officer for the time being acting as Chief Clerk thereof.

Limitation of imprisonment for non-payment of money.

1874, No. 14, sec. 3

3. (1.) With the exceptions hereinafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money.

(2.) There shall be excepted from the operation of the above enactment—

- (a.) Default in payment of a penalty or sum in the nature of a penalty other than a penalty in respect of any contract:
- (b.) Default in payment of any sum recoverable summarily before a Magistrate or a Justice or Justices under “The Justices of the Peace Act, 1908,” or otherwise than under “The Magistrates’ Courts Act, 1908”:
- (c.) Default by a trustee or person acting in a fiduciary capacity, and ordered to pay by a Court having jurisdiction in the matter any sum in his possession or control:
- (d.) Default by a solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order:
- (e.) Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order:

Provided, first, that in any case excepted as aforesaid no person shall be imprisoned for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any Court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money.

Power of committal for non-payment of debts in certain cases.

Ibid, sec. 5

4. Subject to the provisions hereinafter mentioned and to the prescribed rules, any Court may commit to prison for a term not exceeding three months, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other Court of competent jurisdiction:

Provided that the jurisdiction given by this section of committing a person to prison shall, in the case of any Court other than the Supreme Court, be exercised only subject to the following restrictions, that is to say:—

- (a.) Be exercised only by an order made in open Court showing on its face the ground on which it is issued:
- (b.) Be exercised only in respect of a judgment or order not exceeding, exclusive of costs, such sum as is within the jurisdiction of the Court or other tribunal to which application for committal is made with regard to the recovery of debts:
- (c.) Be exercised only as respects a judgment or order of a District Court by a District Judge or his Deputy, or by a Magistrate:
- (d.) Be exercised only as respects the judgment or order of a Magistrate’s Court by a District Court Judge or his Deputy, or by a Magistrate:

Provided also that such jurisdiction shall only be exercised in the cases hereinafter mentioned.

5. (1.) Whenever and as often as any sum of money due under any judgment or order in any Court remains unsatisfied, it shall be lawful for the person entitled to recover such money, whether any writ of sale or any other writ, or any warrant to levy on goods or any other warrant, has or has not been issued for the same, to obtain from time to time from the Registrar of any Court of competent jurisdiction a summons in the prescribed form or to the like effect directed to the person liable to pay such money.

Cases in which debtor may be committed.
1874, No. 14, sec. 6

(2.) Such summons shall be served personally or in the prescribed manner.

(3.) If the person summoned appears in pursuance of the summons, he may be examined on oath—

- (a.) As to his estate and effects, and as to the property and means he has of paying, satisfying, and discharging such sum of money:
- (b.) As to the disposal he may have made of any property:
- (c.) As to his intention to leave New Zealand without paying such money as is still unsatisfied, or to depart elsewhere within New Zealand with intent to evade payment:
- (d.) As to the mode in which the liability the subject of such judgment or order was incurred.

6. The person obtaining such summons as aforesaid, and all other witnesses whom the Court thinks requisite, may be examined on oath touching the inquiries authorised to be made as aforesaid.

Examination may be on oath.
Ibid, sec. 7

7. If a party so summoned as aforesaid—

- (a.) Does not attend as required by such summons, and does not allege a sufficient cause for not attending; or
- (b.) If attending, refuses to be sworn or to disclose any of the things referred to in section five hereof; or
- (c.) If he does not make answer touching any of the things referred to in section five hereof to the satisfaction of such Court; or
- (d.) If it appears to such Court by oral testimony or affidavit, or by both, that such party contracted the liability which was the subject of such judgment or order by any fraud, or that such party has made or caused to be made any gift, delivery, or transfer of any property, or charged, removed, or concealed the same, with intent to defraud the person entitled to such money as aforesaid, or with intent to defeat any execution issued upon such judgment or order; or
- (e.) If on oral testimony or affidavit, or by both, it appears to the satisfaction of such Court that the party so summoned has then, or has had since the time of obtaining such order or judgment, sufficient means and ability to pay the sum so recovered against him and so due and unsatisfied as aforesaid, or any instalment thereof when an order to pay by instalments has been made, or that he is about to leave New Zealand without paying such money as is still unsatisfied, or to depart elsewhere within New Zealand with intent to evade payment:

Procedure.
Ibid, sec. 8

then, in any or either of the cases aforesaid, it shall be lawful for such Court, if it thinks fit so to do, to order that unless such party pays into

such Court either forthwith or by such instalments as the Court may fix, or within the time limited in such order, the money so unsatisfied, with interest thereon at such rate as the Court directs, not exceeding five per centum per annum, and the costs of any fruitless writs or warrants of execution and of levies thereunder, together with the costs of and occasioned by such summons and examination, he shall be committed to prison for a period not exceeding three months.

No order for committal against judgment debtor in certain cases.
1903, No. 64, sec. 2

8. Except in any of the cases mentioned in subsection two of section three hereof, or where the debt was incurred by fraud, no order of committal to prison for non-payment of a judgment debt, or of any instalment thereof, shall be made if the debtor proves to the satisfaction of the Court that, after providing for the reasonable maintenance of himself and his family, he has not since the date of the judgment had sufficient money to pay the debt, or that he has not since the date of any order to pay the debt by instalments had sufficient money to pay any such instalment:

Provided that no such order of committal shall be made where the judgment creditor is a person, firm, or company whose business is that of collecting or recovering debts, unless the Court is satisfied that the judgment debt was incurred to the judgment creditor directly, and was not acquired by assignment from the original creditor.

Preceding section not retrospective.
1900, No. 36, sec. 4

9. The provisions of the last preceding section shall not apply to any debt contracted previous to the thirteenth day of October, one thousand nine hundred (being the date of the coming into operation of "The Imprisonment for Debt Limitation Act, 1900"), except in the case mentioned in the proviso to that section.

Court may direct payment to be by instalments.
Ibid, sec. 5

10. When giving any judgment or making any order for the payment of money, the Court of its own motion, or on the application of any of the parties, may direct that payment be made by instalments of such amount, and at such periodical intervals, as the Court thinks fit.

Court may order payment of debt by instalments.
1874, No. 14, sec. 10

11. For the purposes of this Act any Court may direct any debt due from any person in pursuance of any order or judgment of that or any other Court of competent jurisdiction to be paid by instalments, and may from time to time rescind or vary such order.

Judge may exercise jurisdiction in Chambers.
Ibid, sec. 9

12. Any jurisdiction given by this Act to the Supreme Court may be exercised by a Judge sitting in Chambers or otherwise in the prescribed manner.

Committals to public prison.
Ibid, sec. 11
Order of committal.
Ibid, sec. 11

13. Persons committed under this Act may be committed to such public prison within New Zealand as the Court thinks fit.

14. Whenever any order of committal has been made under this Act, and the money and the costs specified therein, or any part thereof, or any instalment has not been paid into Court in pursuance thereof, the Registrar shall, without previous notice or summons to the party required to pay the same, issue a warrant in the prescribed form, and the bailiff of the Court and the keeper of the prison to whom such warrant is directed shall respectively execute and obey the warrant, and all constables shall aid and assist in the execution of such warrant.

Imprisonment not to operate as extinguishment of debt.
Ibid, sec. 12

15. No imprisonment under this Act shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to issue execution against the lands, goods, or chattels of the person imprisoned in the same manner as if such imprisonment had not taken place.

16. Any person imprisoned under this Act shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

Discharge out of custody on payment 1874, No. 14, sec. 13

17. Notwithstanding the provisions hereinbefore contained, it shall be lawful for the Court making any order of committal under this Act, or for the Supreme Court or any Judge thereof, at any time (if under the special circumstances of the particular case the Court or Judge thinks fit to do so) to direct that any person in custody under any such order as aforesaid shall be forthwith discharged, and he shall be forthwith discharged accordingly.

Provision for discharging out of custody in other cases.

Ibid, sec. 14

SCHEDULE.

ENACTMENTS CONSOLIDATED

- 1874, No. 14.—“The Imprisonment for Debt Abolition Act, 1874”: Except section 15.
1900, No. 36.—“The Imprisonment for Debt Limitation Act, 1900”: Except section 6.
1903, No. 64.—“The Imprisonment for Debt Limitation Amendment Act, 1903.”